

No. 23-16065

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IN THE  
**United States Court of Appeals  
for the Ninth Circuit**

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TERADATA CORP., TERADATA US, INC. AND TERADATA OPERATIONS, INC.,  
*Plaintiffs-Appellants,*

v.

SAP SE, SAP AMERICA, INC. AND SAP LABS, LLC,  
*Defendants-Appellees.*

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On Appeal from the  
United States District Court for the Northern District of California  
Honorable William H. Orrick  
No. 18-cv-03670-WHO

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**MOTION OF THE UNITED STATES OF AMERICA FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE IN  
SUPPORT OF NEITHER PARTY AND FOR FIVE MINUTES OF  
ARGUMENT TIME**

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Pursuant to Federal Rule of Appellate Procedure 29(a)(8), the United States respectfully moves for leave to participate as amicus curiae in the February 12, 2024, oral argument of this case. The United States requests an allotment of five (5) minutes of time independent of and in addition to the time allocated to the parties.

The United States seeks to participate at oral argument because it enforces the federal antitrust laws and has a strong interest in their correct interpretation. The United States and the Federal Trade Commission filed an amicus brief in support of neither party in this case, addressing apparent legal errors in the district court's framework for defining relevant markets in antitrust cases. The United States and the Federal Trade Commission took no position on the merits of the plaintiffs/appellants' antitrust claims.

The United States believes that its participation at oral argument would be helpful to the Court, especially in explaining how the District Court's apparently rigid approach to market definition, if uncorrected, could harm antitrust enforcement beyond the specific context of this case. Because its amicus brief does not support either side, the United States requests five minutes of argument time independent of and in addition to the time allocated to the parties.

The United States participated in oral argument of this matter in the Federal Circuit, which was held prior to the transfer of this matter to this Court. The United States was allocated five minutes of time independent of the time allocated to the

parties. Order at 2, *Teradata Corp. v. SAP SE*, No. 22-1286 (Fed. Cir. May 19, 2023), ECF No. 84.

Plaintiffs/appellants Teradata Corporation, Teradata US, Inc., and Teradata Operations, Inc. (Teradata) do not oppose the United States' request as long as any time for the United States to argue does not reduce the 15 minutes allotted to Teradata.

Defendants/appellees SAP SE, SAP America, Inc., and SAP Labs, LLC (SAP) do not oppose the United States' motion if (1) SAP receives an additional five minutes of time or (2) the United States is allotted five minutes of Teradata's time. SAP does not consent to the United States receiving five minutes of time independent of and in addition to the time allotted to the parties.

Respectfully submitted.

/s/ Patrick M. Kuhlmann

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Dated: January 10, 2024

### **CERTIFICATE OF COMPLIANCE**

1. This motion complies with the type-volume limitations of Fed. R. App. P. 27(d)(2)(A) because it contains 373 words, excluding the parts exempted by Fed. R. App. P. 32(f).

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word Version 2310 with 14-point Times New Roman font.

January 10, 2024

/s/ Patrick M. Kuhlmann  
*Attorney*

### **CERTIFICATE OF SERVICE**

I hereby certify that on January 10, 2024, I electronically filed the foregoing motion with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit using the CM/ECF system. I certify that participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Patrick M. Kuhlmann  
*Attorney*